



# OFFICE OF ADMINISTRATION

## ADMINISTRATIVE POLICY

POLICY TITLE: <b>Family and Medical Leave Act (FMLA)</b>	AUTHORIZED BY: <b>Douglas E Nelson</b> Commissioner
POLICY: <b>B-35</b>	PAGE: <b>1 of 9</b>
ISSUED: <b>May 2003</b>	REVISED: <b>June 2015</b>

### I. General Statement

The Office of Administration (OA) provides for employees to be absent for family and medical related reasons as outlined in the Annual Leave (B-10), Sick Leave (B-11), Leave of Absence Without Pay (B-13) and Share Leave (B-30) policies. The Family Medical Leave Act (FMLA) is a federal law that guarantees eligible employees with qualifying conditions the right to be absent from work (with or without pay) for up to 12 work weeks per year (or 26 work weeks per year for the care of a qualifying covered service member) and at the end of such time, restoration to the same or an equivalent position. FMLA does not provide additional paid leave for employees; it simply designates leave taken for qualifying conditions to ensure that employees are granted benefits under the FMLA.

OA has elected to follow the FMLA as more particularly described in this policy.

Absences covered under FMLA run concurrently with all types of accrued paid and unpaid leave as described in the above-listed policies.

**Questions regarding application, implementation and interpretation of this policy should be referred to the Office of Administration, Human Resources Office.**

### II. Definitions

For purposes of family and medical care leave, the following words and terms, unless the context clearly requires otherwise, shall have the following meanings:

- A. “Child” means a biological, adopted or foster child, stepchild, legal ward or child of a person standing in loco parentis, who is under 18 years of age or 18 years of age or older and incapable of self care due to mental or physical disability. For leave involving a qualifying exigency or the care of a covered service member a child can be of any age.
- B. “Covered service member” means a member of the Armed Forces (including a member of the National Guard or Reserves) who is undergoing medical treatment, recuperation, or therapy, is otherwise in outpatient status, or is otherwise on the temporary disability retired list for a serious injury or illness; or a veteran who is undergoing medical treatment, recuperation or therapy for a serious injury or illness and who was a member of the Armed Forces at any time during the period of five years preceding the date on which the veteran undergoes the medical



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treatment, recuperation or therapy. In the case of a veteran, the injury or illness must have been incurred in the line of duty on active duty or existed before the beginning of active duty and was aggravated by service in the line of duty and manifested itself before or after the member became a veteran.

- C. “Covered active duty” means a member of the regular armed forces during deployment to a foreign country or a member of the Reserves or National Guard during deployment to a foreign country under a call or order to active duty.
- D. “Eligible employee” means an employee who has been employed by the State for at least 12 months and who has worked at least 1250 hours within the 12 months preceding the date the leave is to begin. An eligible employee is eligible for a maximum of 12 work weeks (480 hours) of unpaid leave during the year.
- E. “Next of kin” means the nearest blood relative of a covered service member other than his/her spouse, child, or parent.
- F. “Parent” means the biological parent of an employee or an individual who stands or stood in loco parentis to an employee when the employee was a child. This term does not include parents-in-law.
- G. “In loco parentis” means those persons with day to day responsibilities to care for and financially support a child.
- H. “Qualifying exigency” means one or more of the following situations where an employee’s spouse, child, or parent is on covered active duty or call to active duty status:
  - 1. To address any last minute issues prior to a military service member’s deployment (leave taken for this purpose can be used for a period of seven calendar days);
  - 2. To attend any military events or family support or assistance programs;
  - 3. To arrange for alternative childcare, provide childcare on an urgent, immediate need basis, enroll or transfer a child into a new school or day care facility, or to attend meetings with staff at a school or a daycare facility;



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4. To make or update financial or legal arrangements, or to act as the covered military member's representative before a federal, state, or local agency for purposes of obtaining, arranging, or appealing military service benefits;
  5. To attend counseling provided by someone other than a health care provider for employee, for the covered service member, or for the employee's child;
  6. To spend time with a covered service member who is on leave during the period of deployment (leave taken for this purpose can be used for a period of five calendar days);
  7. To engage in post-deployment activities including ceremonies, reintegration briefings, and issues relating to the death of a covered service member; and
  8. To address additional events that OA and the employee agree should qualify.
- I. "Serious health condition" means an illness, injury, impairment, or physical or mental condition that involves:
1. Any period of incapacity or treatment in connection with or consequent to inpatient care in a hospital, hospice or residential medical care facility;
  2. Any period of incapacity requiring absence from work, school or other regular daily activities, of more than three (3) calendar days, that also involves continuing treatment by, or under the supervision of, a health care provider; or
  3. Continuing treatment by, or under the supervision of, a health care provider for a chronic or long-term health condition that is incurable or so serious that, if not treated, would likely result in a period of incapacity of more than three (3) calendar days; or for prenatal care;

The definition of serious health condition does not include, unless complications arise, such medical conditions as the common cold, flu, earaches, upset stomach, minor ulcers, and headaches other than migraine, routine dental, orthodontic problems or periodontal disease. FMLA leave may not be used for routine physicals and eye or dental examinations unless the examination is to determine if a serious health condition exists.



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- J. “Spouse” means a husband or wife. For purposes of this definition, husband or wife refers to the other person with whom an individual entered into marriage as defined or recognized under State law for purposes of marriage in the State in which the marriage was entered into or, in the case of a marriage entered into outside of any State, if the marriage is valid in the place where entered into and could have been entered into in at least one State.
  
- K. “Substantially equivalent position” means a position that has the same pay, benefits and working conditions, including privileges, prerequisites and status. It must involve the same or substantially similar duties and responsibilities, which must entail substantially equivalent skill, effort, responsibility and authority.
  
- L. “Year” means the current month and preceding eleven (11) months.

### **III. Qualifying Events When FMLA Applies**

- A. An eligible employee is limited to 12 work weeks (480 hours) of FMLA leave during any 12-month period for one or more of the following situations:
  - 1. A serious health condition of an employee that makes the employee unable to work.
  - 2. The care of an employee’s spouse, child, or parent who has a serious health condition.
  - 3. For any of the following: 1) the birth of a son or daughter; 2) to care for the newborn child; or 3) for the placement with the employee of a child for adoption or foster care, and to care for the newly placed child;
    - i. The benefits of FMLA apply equally to male and female employees; a father as well as a mother, can take family leave for the birth, adoption or foster care placement of a child;
    - ii. FMLA leave can begin before the actual placement or adoption of a child if an absence from work is required for the placement for the adoption or foster care to proceed;
    - iii. The right to FMLA leave related to the birth or placement of a child expires 12 months after the birth or placement of a child; and



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iv. In the event that both parents are employees of the State of Missouri, leave for the birth or placement of a child shall be limited to a period of 12 weeks (480 hours) between the parents.

4. A qualifying exigency resulting from a situation where an employee's spouse, child, or parent is on covered active duty, or has been notified of an impending call or order to active duty, in the Armed Forces in support of a military operation which involves military actions, operations, or hostilities against an enemy of the United States or against an opposing military force.

B. An eligible employee may use 26 workweeks of FMLA leave during any 12-month period to care for a spouse, child, parent, or next of kin who is a covered service member.

#### IV. FMLA Leave Guidelines

##### A. Required Notices

1. An employee is required to be familiar with this policy and to notify his or her supervisor of an event that may qualify as FMLA leave.
2. Employees seeking to use FMLA leave are required to provide 30-day advance written notice to his/her division director of the need to take FMLA leave when the need is foreseeable. If leave is foreseeable less than 30 days in advance, the employee must provide written notice as soon as practicable – generally, either the same or next business day. When the need for leave is not foreseeable, the employee must provide notice to the employer as soon as practicable under the facts and circumstances of the particular case. Employees must provide sufficient information for OA to determine whether the FMLA may apply to the leave request. Depending on the situation, such information may include that the employee is incapacitated due to pregnancy, has been hospitalized overnight, is unable to perform the functions of the job, and/or that the employee or employee's qualifying family member is under the continuing care of a health care provider.
3. OA will be proactive in notifying employees when it appears a FMLA qualifying event exists. OA will initiate FMLA notices and request a Certification of Health Care Provider when appropriate. The employee's



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division director or designee shall contact OA, Human Resources Office upon learning of a potential FMLA qualifying event. The Human Resources Office will initiate all FMLA notices to employees.

4. An employee is required to provide notice of any absence that qualifies as FMLA leave under this policy. The employee is also required to apply for FMLA leave for any absences for a qualifying event requiring intermittent leave/reduced work hours schedule, regardless of the length of each absence. Requests for FMLA leave should be made using the standard procedures for requesting leave.
5. Upon the request of the employee's division director or the OA Human Resources Office, the employee may be required to obtain additional medical certification.
6. An employee who is taking FMLA leave should provide periodic reports to his/her supervisor regarding intent to return to work and the expected time of return.

### B. Certification

1. In cases of leave used for the serious health condition of an employee or a covered family member, OA may require certification of the illness from a health care provider. An employee is responsible for supplying authentic, complete and sufficient certification documents when requested. The Certification of Health Care Provider Form must be completed by the doctor and submitted by the employee within 15 days after requesting FMLA leave. Medical certification should include: 1) date the health condition commenced; 2) probable duration; 3) diagnosis and treatment, and 4) a physician's statement that the employee is unable to perform the essential functions of his or her position, or is needed to provide care to a family member.
2. OA may require the eligible employee obtain the opinion of a second health care provider designated by OA. If a second opinion is required, the cost will be at the expense of OA.
3. Recertification may be required as authorized by the federal FMLA regulations.



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4. Employees using FMLA leave because of their own serious health condition must provide a release from their health care provider stating when they are able to return to work. The release should also include any medical restrictions that may exist upon return to work.
5. Employees requesting FMLA leave for qualifying exigencies must provide certification by supplying a copy of the orders or call to active duty.
6. Employees requesting FMLA leave to care for a covered service member must supply medical certification as provided in this section for other FMLA serious health conditions.

### C. Types of Leave (Paid and Unpaid)

1. Employees requesting FMLA leave for their own serious health condition or a serious health condition of a spouse, child or parent must use applicable accumulated sick leave, annual leave, and compensatory time before requesting and obtaining approval for unpaid leave. Use of sick leave, annual leave and leave without pay must comply with other statutes, policies and practices regarding the use of such leave.
2. An employee who gives birth to a child may use accrued sick leave for the first eight weeks of an absence following the birth of the child. Absent appropriate medical certification from the employee's health care provider, any absence beyond eight weeks for this purpose may be applied to the employee's accrued annual leave or may be taken as leave without pay. The preceding provisions shall also apply to an employee who is adopting a child or is receiving a child for foster care, but only if the employee is the person primarily responsible for the personal care and attention of the child.
3. If the employee's spouse has given birth to a child, the employee may apply accrued sick leave to the first ten working days of the absence following the birth of a child. Any additional sick leave usage shall apply only upon receipt of a statement from the health care provider certifying that the spouse is required to provide care for the mother and/or the child. All other time off for this purpose shall be charged to the employee's accrued annual leave or compensatory time or taken as leave without pay.



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4. If the employee needs to use leave without pay to complete the 12 weeks of FMLA entitlement, a request for unpaid leave under the FMLA and OA Policy B-13 must be submitted.
5. Employees may not use sick leave for FMLA leave taken for qualifying exigencies. Employees must use annual leave, compensatory time or leave without pay.

#### D. Intermittent Leave/Reduced Work Hours

1. If medically necessary as shown on the Certification of Health Care Provider Form, FMLA leave for the serious health condition of an employee or an employee's child, parent or spouse may be taken on an intermittent/reduced work hour basis, if required by law.
2. When applicable, FMLA intermittent/reduced work hours leave should be scheduled so as not to disrupt the operation of the work unit.
3. The employee may be temporarily assigned to a substantially equivalent position that better accommodates the intermittent leave or reduced hour schedule.
4. Recertification may be required as authorized by the federal FMLA regulations.

#### V. Employee Benefits

- A. An employee will not be disciplined for FMLA covered absences providing all requirements of this policy are met.
- B. An employee will be returned to the same or substantially equivalent job upon returning to work from FMLA leave providing all requirements of this policy are met.
- C. During FMLA leave, and in accordance with the Family and Medical Leave Notice letter to the employee, health care coverage under group health plans will be maintained by OA to the same extent as before leave was taken.



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- D. Upon employee's return to work, benefits will be resumed at the same or equivalent level as when leave began without a qualification period.
1. Previously accrued benefits are not forfeited.
  2. Employee does not accrue additional benefits when FMLA time is taken as leave without pay.
  3. Service/retirement credit will be governed by applicable statutes and policies of MOSERS.

## **VI. Failure to Return to Work from FMLA Leave**

- A. If the employee continues leave without pay after the 12 week FMLA leave period is exhausted, the employee will be required to pay the premium for state health insurance to maintain coverage.
- B. If the employee fails to return to work after the expiration of FMLA leave, he/she may be required to reimburse OA for payment of health insurance premiums during the leave, unless the reason the employee failed to return is the presence of a serious health condition which prevents the employee from performing his/her job or is due to circumstances beyond the employee's control.